IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 183 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE MD SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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LAXMANBHAI DEVSHIBHAI SAPOVADIA - Appellant(s)
Versus
STATE OFGUJARAT - Opponent(s)

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Appearance :
MR JB PARDIWALA for Appellant(s) : 1,MR PM THAKKAR for Appellant(s) : 1,
MR LR PUJARI PUBLIC PROSECUTOR for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE MD SHAH

Date : 28/12/2007

ORAL JUDGMENT

1.0 This appeal is directed against the judgment and order of the learned Special Judge, Jamnagar dated 10th February, 1995 passed in

Special Case No.5 of 1987 whereby the trial Court convicted original accused-the appellant, herein, for the offence punishable under Section 5(2) of the Prevention of Corruption Act, 1947 and was sentenced to undergo Rigorous Imprisonment for a period of three years and to pay fine of Rs.500/- and in case of default to undergo further Rigorous Imprisonment for a period of six months. The appellant was also convicted by the trial Court for the offence punishable under Section 161 of the Indian Penal Code and was sentenced to undergo Rigorous Imprisonment for a period of one year. The aforesaid sentences were ordered to run concurrently.

2.0 The brief facts of the case are that the complainant-P.W.-1, at the relevant point of time, was working as Head Master in Primary school at Sanosara village and the wife of the complainant was working as 'Sanchalika' in 'Anganvadi' at Dedakdad village. The appellant was working as Junior Clerk at Dhrol Taluka Panchayat and as a part of his duty he had to

supervise 'Anganvadis'.

2.1 Since wife of P.W.-1 was suffering from spine ache, she remained absent from her job on 29.01.1986. The appellant visited the 'Anganvadi' run by the wife of P.W.-1 on 29.01.1986 and found her absent. In pursuance of that the appellant started demanding Rs.300/- from P.W.-1 and his wife for not treating her absence on the said day and for winding up the matter. Hence, P.W.-1 paid an amount of Rs.100/- to the appellant and assured him to pay the remaining amount later. Since, P.W.-1 did not want to pay bribe money to the appellant, he approached A.C.B., Jamnagar on 11.02.1986 and obtained guidance from P.W.-4-Mr. G.K. Raval, I.O.. On that day, while returning to Sanosara, P.W.-1 met the appellant at Dhrol. At that time, the appellant demanded remaining Rs.200/-. In reply to that P.W.-1 told the appellant that he shall pay the remaining Rs.200/- on 17.02.1986.

2.2 On 17.02.1986, P.W.-1 again went to

office of A.C.B., Jamnagar and lodged complaint against the appellant under the Prevention of Corruption Act, 1947. In pursuance of that panchas were called and all the necessary statutory procedures required for carrying out a raid were completed in the presence of panchas. The raiding party, thereafter, left for Dhrol.

2.3 On reaching Dhrol, P.W.-1 and P.W.-2 went to the office of the appellant. But, the appellant was not present there. They were told that one employee had expired and the appellant had gone to the house of that employee. Hence, P.W.-1 and P.W.-2 came back. Then, P.W.-1, the panchas and members of the raiding party went to petrol pump on high-way and stood there waiting for the appellant. In the evening at about 7:00 p.m., the members of the raiding party along with P.W.-1 and panchas went to the residence of the appellant. On reaching near the residence of the appellant, they left their vehicles there. P.W.-1 and P.W.-2 went to the residence of the appellant on foot followed by the members of the raiding

party. Thereafter, everybody took their positions as per the arrangement. When P.W.-1 and P.W.-2 reached at the residence of the appellant, P.W.-1 called him(the appellant). The appellant came out and inquired from P.W.-1 whether his wife had gone to the 'Anganvadi' or not and P.W.-1 told that she had gone. Then, the appellant inquired as to whether P.W.-1 has brought the money. In reply to that P.W.-1 told the appellant that he had brought the money as per the demand, and hence, do the needful in the matter. The appellant, thereafter, demanded money and P.W.-1 produced the tainted currency notes and gave it to the appellant. The appellant accepted the same with his left hand and put it in the left-hand side pocket of his trouser. P.W.-1 then gave signal and the members of the raiding party rushed to the spot. Since, the darkness had spread over there and the people had also gathered there at that time, the appellant was taken to the Rest House at Dhrol. At the Rest House, necessary statutory procedures i.e. experiment of ultraviolet light and normal light

for ascertaining presence of anthracene powder on currency notes, preparation of seizure memo etc., were completed and trap Panchnama was drawn to that effect.

2.4 After obtaining sanction, charge-sheet was submitted against the appellant before the trial Court. The trial Court framed, read over and explained charges under Section 5(2) of the Prevention of Corruption Act, 1947 and Section 161 of the Indian Penal Code. However, the appellant did not plead guilty to the charges and claimed to be tried. The trial Court, then, heard all the parties and convicted and sentenced the appellant as stated in Para-1 of the judgment. Hence, the present appeal.

3.0 Heard, Mr. Pardiwala, learned Advocate for the appellant and Mr. Pujari, learned APP for opponent-State.

4.0 Mr. Pardiwala, learned Advocate for the appellant has submitted that the story of

'demand' of bribe by the appellant, put forward by the prosecution is highly unnatural and improbable in the background of the case. In support of the same, he has placed reliance on a decision of the Hon'ble Apex Court in the case of ***"Gulam Mahmood A. Malek Vs. The State of Gujarat"*** reported in AIR 1980 SC 1558 wherein it was observed that while appreciating evidence, the background of the case should also be taken into consideration.

4.1 He has submitted that the trial Court ought to have appreciated the fact that since the appellant had submitted his inspection report on the very same day i.e. on 29.01.1986, the question of demanding bribe from the complainant subsequently, does not arise.

4.2 He has further submitted that the trial Court has committed an error in not taking into consideration the material contradictions between the complaint filed by the wife of the complainant and the complainant himself as well

as contradictions in the evidence of P.W.-1-Panch No.1 and the complainant.

4.3 He has submitted that the non-examination of the wife of P.W.-1, the watchman of the Rest House at Dhrol as well as any of the persons who had gathered at the scene of offence on 17.02.1986 by the prosecution, is fatal to the prosecution case.

4.4 He has submitted that the trial Court has committed an error in not taking into consideration the fact that the incident occurred near the residence of the appellant whereas the experiment of the ultraviolet light and normal light for ascertaining presence of anthracene powder, seizure of tainted currency notes, drawing of 'Panchnama' etc. procedures were done at the Dhrol Rest House which is about one and half kilometers away from the residence of the appellant.

4.5 He has lastly submitted that if the

Hon'ble Court is of the opinion that the appeal deserves to be dismissed, then, taking into consideration the long time i.e. about 21 years which has elapsed from the date of incident till the final disposal of the appeal and the mental, physical and financial agony undergone by the appellant during the aforesaid period, a lenient view should be taken in regard to the sentences of the appellant.

5.0 Mr. Pujari, learned APP has supported the case of the prosecution and has stated that after taking into consideration all the facts and circumstances of the case and the documents placed on record, the trial Court has passed the order of conviction, and hence, no interference is called for by this Court.

6.0 The prosecution, in support of its case, has examined four witnesses i.e., Original Complainant– Kantilal Jethalal Parmar-P.W.-1(Exhibit-7), Chandulal Kalabhai Kharadi-P.W.-2 (Exhibit-10), Pravinchandra Maganlal Vyas-P.W.-

3(Exhibit-13) and Girjashankar Keshavlal Raval-P.W.-4(Exhibit-27). The prosecution has also placed reliance on several documentary evidences i.e., the Complaint (Exhibit-8), application (Exhibit-9), Panchnama (Exhibit-12) and Receipt(Exhibit-11)to support its case.

6.1 In the light of the above submissions, here, it would be relevant to refer to deposition of original complainant i.e., P.W.-1. P.W.-1 has stated that at the relevant point of time he was working as Head Master in Primary School at Sanosara and his wife was working as 'Sanchalika' in 'Anganvadi' at Dedakdad village. The appellant was working as Junior Clerk in Dhrol Taluka Panchayat and as a part of his duty he had to supervise the 'Anganvadis'. P.W.-1 has further stated that since his wife was suffering from acute spine ache, she could not go to Anganvadi on 29.01.1986. The appellant visited the Anganvadi on 29.01.1986 and found her(wife of P.W.-1) absent. On 01.02.1986, when P.W.-1 along with his wife had gone to panchayat office since

his wife had to take her salary, at that time, the appellant met P.W.-1 and his wife and told them that on 29.01.1986 he had visited the Anganvadi run by her and he(the appellant) had marked her absence. The appellant further told P.W.-1 that if they pay Rs.300/- the matter of her absence will be taken care of, otherwise, he(the appellant)would terminate the services of his(P.W.-1's)wife for committing fraud with the Government. However, P.W.-1 did not pay anything to the appellant on that day.

6.2 On 06.02.1986, the appellant again met P.W.-1 in bazaar at Dhrol and repeated the demand. Hence, P.W.-1 told the appellant that he shall try to arrange around rupees hundred in an hour or two and shall give it to the appellant at his residence. Later on that evening, P.W.-1 went to the residence of the appellant and gave him(the appellant)Rs.100/-. At that time the appellant told P.W.-1 that he has to pay remaining Rs.200/- otherwise it would be difficult for his wife to give explanation. But,

if he(P.W.-1)pay Rs.200/- the matter would be taken care of. Thereupon, the wife of P.W.-1 received memo dated 05.02.1986 on 10.02.2006.

6.3 P.W.-1 has further stated that, since he did not want to pay bribe to the appellant, he approached A.C.B., Jamnagar on 11.02.1986. He there met one Mr. G.K. Raval-P.W.-4, I.O. and obtained guidance from him. On that day, while returning to Sanosara from Jamnagar, P.W.-1 met the appellant at Dhrol and told him that he shall give the remaining amount on 17.02.1986.

6.4 On 17.02.1986, P.W.-1 came to the A.C.B., Jamnagar and lodged complaint. Thereupon, panchas were called and necessary statutory procedures i.e. experiment of ultraviolet light and normal light for ascertaining presence of anthracene powder on currency notes, preparation of seizure memo etc., were completed and preliminary Panachnama was prepared to the aforesaid effect. P.W.-4 gave instructions to P.W.-2-panch No.1 to remain with P.W.-1 and to witness the transaction

that may take place between P.W.-1 and the appellant, and then, the raiding party left for the office of the appellant at Dhrol.

6.5 On reaching Dhrol, P.W.-1 and P.W.-2 went towards the office of the appellant. However, the appellant was not present there. They were told that the appellant had gone to a condolence visit. P.W.-1 and P.W.-2 then came back and informed P.W.-4 about the same. Thereafter, P.W.-1, panchas and the members of the raiding party went to highway and stood there waiting for the appellant near a petrol pump. At about 7:00 p.m., P.W.-1, panchas and the members of the raiding party went to residence of the appellant.

6.6 On reaching near the residence of the appellant, everybody took their position as per the arrangement. P.W.-1 and P.W.-2 went towards the residence of the appellant. Then, P.W.-1 called the appellant. On hearing the call of P.W.-1, the appellant came out and asked P.W.-1 whether his(P.W.-1's) wife had gone to the

Anganvadi or not? In reply to that P.W.-1 told him(the appellant)that she had gone. The appellant then asked P.W.-1 whether he(P.W.-1) has brought money? In reply to that P.W.-1 told that he has brought money as per the demand. Then, P.W.-1 took out the tainted currency notes with his right hand from his left hand-side pocket and gave it to the appellant. The appellant accepted the same with his left hand and put it in left hand-side pocket of his trouser. Thereupon, as per the arrangement, P.W.-1 gave the signal to the raiding party. Hence, the members of the raiding party rushed to the spot immediately.

6.7 P.W.-4, then, gave his introduction to the appellant and told him not to move. However, since there was a huge crowd gathered there and darkness was also spread over by that time, the appellant was taken to the Dhrol Rest House. At the Rest House, experiment of ultraviolet light and normal light for ascertaining presence of anthracene powder on the currency notes recovered

from trouser pocket of the appellant as well as on the hands of P.W.-1 and the appellant as well as on shirt worn by P.W.-1 and on the trouser and shirt worn by the appellant was done and the presence of anthracene powder was found on all of them. In pursuance of that preparation of seizure memo etc., necessary statutory procedures were completed and the 'Muddamal' recovered from the appellant was attached and trap Panchnama was drawn to the aforesaid effect.

6.8 At the time of his cross-examination, P.W.-1 stuck to the version given by him in his deposition and the defence failed to bring out anything which could help the appellants.

6.9 The version of offence given by P.W.-1 that accused No.1 demanded and accepted an amount of Rs.200/- from him (P.W.-1) for not marking absence of his(P.W.-1's) wife and for winding up the matter, is also supported by evidence of one Chandubhai Kalabhai Kharadi–Original Panch No.1-P.W.-2, herein, as well as one Girjashankar

Keshavlal Raval-P.W.-4, Investigating Officer. P.W.-2 and P.W.-4 have strongly supported the case of prosecution of demand and acceptance of bribe by the appellant from P.W.-1. The conduct of the appellant, asking P.W.-1 as to whether his(P.W.-1's) wife had gone to the 'Anganvadi' and that as to whether P.W.-1 has brought the money or not, in the presence of P.W.-2, strongly supports the case of the prosecution that the appellant had demanded and accepted Rs.200/- as bribe from P.W.-1. Even, otherwise, in view of the absence of any satisfactory explanation on the part of the appellant as to how he came into possession of tainted currency notes and as to how the marks of anthracene powder came on his hands as well as on the trouser and shirt worn by him, to rebut the case put forward by the prosecution, strongly suggests that the appellant pressurized P.W.-1 to make him(P.W.-1)pay bribe money. The evidence of P.W.-4 and P.W.2- who is an independent witness, are natural and trustworthy, and hence, the trial Court has rightly relied on the same.

6.10 Apart from that the case of the prosecution is also supported by the documentary evidence i.e., the Complaint (Exhibit-8), Panchnama(Exhibit-12) and Receipt (Exhibit-11). From the above said documentary evidence, the ingredients of bribe i.e. the demand, offer and acceptance are proved beyond doubt by the prosecution.

7.0 Since the evidence discussed hereinabove are found to be sufficient in deciding the Appeal, I am not discussing the depositions of other witnesses, as they are not of much relevance.

8.0 So far as the contention raised by the learned Advocate for the appellant that taking into consideration the background of the case, the story of 'demand' of bribe put forward by the prosecution cannot be believed is concerned, P.W.-1 and P.W.-2 in their depositions as well as in their cross-examinations have clearly stated

that on the day of alleged offence, on reaching the residence of the appellant when P.W.-1 called the appellant, the appellant came out and asked P.W.-1 as to whether his(P.W.-1's) wife had gone to the 'Anganvadi'? In reply to that P.W.-1 told the appellant that his wife had gone. The appellant then asked P.W.-1 as to whether he had brought the money? Hence, P.W.-1 told the appellant that he had brought the money as per the demand and then took out the bribe amount from the pocket of his shirt and gave it to the appellant. The appellant accepted the bribe amount and put it in the pocket of his trouser and at that time he(the appellant) was caught red-handed by the A.C.B., Jamnagar. P.W.-2 who is a government servant and an independent witness has fully supported the version of offence given by P.W.-1 and the defence failed to prove contrary to the same. Apart from that the appellant has not given any explanation as to how he came into possession of the tainted currency notes and as to how the marks of anthracene powder came on his hands as well as on his

trouser. Hence, the decision of the Hon'ble Apex Court in the case of ***"Gulam Mahmood A. Malek"***(Supra) will not apply to the case on hand and the said contention is rejected.

8.1 So far as the contention raised by the learned Advocate for the appellant that since the appellant had already submitted his inspection report on the very day i.e. on 29.01.1986, the question of demanding bribe subsequently does not arise is concerned, the same requires to be rejected. Since from the record it clearly transpires that the inspection report was submitted by the appellant on 29.01.1986 whereas the show-cause notice was issued to the wife of P.W.-1 on 05.02.1986 which was received by her on 10.02.1986 meaning thereby till 10.02.1986 P.W.-1 and his wife were not aware about the fact of the submission of the report marking absence of wife of P.W.-1 by the appellant and the issuance of the aforesaid show cause notice, and hence, the case put forward by the prosecution that the appellant demanded bribe from P.W.-1 and his wife

on 01.02.1986 and that he(the appellant)accepted an amount of Rs.100/- on 06.02.1986 from P.W.-1, requires to be accepted.

8.2 So far as the contention raised by the learned Advocate for the appellant that there are major contradictions in the evidence of P.W-1 and P.W.-2 is concerned, it is required to be noted that the offence in question took place in the year 1986 whereas the evidence of P.W.-1 and P.W.-2 were recorded in the year 1995 i.e. almost after nine years of the alleged offence. Hence, some contradictions are bound to occur in the depositions of P.W.-1 and P.W.-2. Here, the fact remains that the appellant was caught red-handed which is clear from the evidence available on record and, more particularly, the evidence in the form of 'Panchnama' (Exhibit-12), Receipt(Exhibit-11) and the depositions of P.W.-2 and P.W.-4-I.O.. Therefore, in my opinion, even if there are contradictions, the same are not of much relevance in the present case and that the same shall not have any bearing on the merits of

the case. In that view of the matter, the said contention raised by the learned Advocate for the appellant deserves to be rejected and the same is rejected.

8.3 So far as the contention raised by the learned Advocate for the appellant regarding non-examination of certain witnesses i.e. the watchman of the Rest House at Dhrol where the trap 'Panchnanma' was prepared and the persons gathered at the scene of offence, by the prosecution is fatal to its case is concerned, in the present case, the prosecution in support of its case has examined four witnesses i.e. Original Complainant– Kantilal Jethalal Parmar-P.W.-1(Exhibit-7), Chandulal Kalabhai Kharadi-P.W.-2 (Exhibit-10), Pravinchandra Maganlal Vyas-P.W.-3(Exhibit-13) and Girjashankar Keshavlal Raval-P.W.-4(Exhibit-27). The evidence of P.W.-1, P.W.-4 and P.W.-2-who is an independent witness strongly supports the case of the prosecution of 'demand', 'offer' and 'acceptance' of bribe by the appellant. The evidence of said

witnesses are sufficient to prove the guilt of the accused persons, and hence, non-examination of some of the witnesses, by the prosecution will not be fatal to the case of the prosecution and that the same will not absolve the appellant from the liability of criminal prosecution and, hence, the said contention is rejected.

8.4 So far as the contention raised by the learned Advocate for the appellant that the trap was carried out near the residence of the appellant whereas the preparation of trap panchnama etc. were done at the Dhrol Rest House is concerned, from the record it transpires that on 17.02.1986 P.W.-1 and the members of the raiding party went to the residence of the appellant in the evening since in the afternoon the appellant was not available in the office as he had gone to the residence of an employee on a condolence visit. When P.W.-1 and P.W.-2 reached at the residence of the appellant it had already started getting dark and by the time the appellant was caught red-handed and the trap was

completed by the raiding party it was almost dark over there and besides that the people of the neighborhood had also gathered there. Therefore, it was difficult to carry out any further procedure there. Hence, the appellant was taken to the Dhrol Rest House and the necessary statutory procedures i.e., experiment of normal light and ultraviolet light for ascertaining the presence of anthracene powder, seizure of tainted currency notes, drawing of trap Panchnama etc. were done at the Rest House. Looking at the peculiar facts and circumstances, the same appears to be just and proper. Even otherwise, in view of the fact that the said contention was not raised before the trial Court, the same deserves to be rejected and is rejected.

9.0 In view of the above discussion and taking into consideration the facts and circumstances of the case and the evidence available on record, I have no hesitation in holding that the amount of Rs.200/- received by the appellant from P.W.-1 on 17.02.1986 was

illegal gratification and that the ingredients of bribe i.e. demand, offer and acceptance has been successfully proved by the prosecution beyond doubt. The trial Court has, therefore, rightly convicted the appellant for the offences punishable under Section 5(2) of the Prevention of Corruption Act, 1947 and Section 161 of the Indian Penal Code.

10.0 So far as the alternative contention raised by the learned Advocate for the appellant to take lenient view in regard to the sentences of the appellant, is concerned, here, it would be relevant to refer to a decision of the Hon'ble Apex Court in the case of ***"Biranchi Narayan Mohanty Vs. State of Orissa"*** reported in (2001)9 SCC 288. In that case, the Hon'ble Apex Court taking into consideration the fact that the appellant had suffered punishment of loss of government job, took a lenient view and reduced the sentence of imprisonment of one year to a period of six months.

10.1 Similar, view has been taken by the Hon'ble Apex Court in the case of ***"State of Maharashtra Vs. Rashid B. Mulani"*** reported in (2006)1 SCC 407.

10.2 In the case on hand, the incident in question took place in the year 1986 and since then almost twenty one years have passed. Hence, taking into consideration overall facts and circumstances of the case and the mental, physical and financial agony undergone by the appellant and his family members during the aforesaid period as well as taking into consideration the view taken by the Hon'ble Apex Court in the case of ***"Biranchy Narayan Mohanty"***(Supra) as well as in the case of ***"State of Maharashtra"***(Supra), I am of the opinion that the ends of the justice would be met by reducing the sentences imposed by the trial Court to four months on both the counts.

11.0 No further contention has been raised by the learned Advocate for the appellant.

12.0 In the result, the Appeal is partly allowed. In the facts and circumstances of the case, while upholding the conviction, this Court reduces the sentences of **THREE YEARS** and **ONE YEAR** imposed by the learned Special Judge, Jamnagar vide order dated 10th February, 1995 passed in Special Case No.5 of 1987 for the offences punishable under Section 5(2) of the Prevention of Corruption Act, 1947 as well as for the offence punishable under Section 161 of the Indian Penal Code respectively, to **FOUR MONTHS** on both counts. Rest of the judgment and order of the trial Court stands confirmed. The bail bonds of the appellant stand canceled. The appellant shall surrender before the Jail / competent Authority within a period of **EIGHT WEEKS** from today.

(M.D. Shah,J.)

Umesh/